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Chairman: Mr. Wenaweser ..... (Liechtenstein)
later: Mr. Morikawa (*Vice-Chairman*) ..... (Japan)

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The meeting was called to order at 10.10 a.m.

Agenda item 109: Human rights questions (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/57/134, A/57/138, A/57/140, A/57/173, A/57/182, A/57/205 and Add.1, A/57/274, A/57/275, A/57/277, A/57/283, A/57/311 and Add.1, A/57/323, A/57/356, A/57/357, A/57/369, A/57/371, A/57/384, A/57/385, A/57/394, A/57/446 and A/57/484)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/57/230, A/57/284, A/57/290 and Corr.1, A/57/292, A/57/309, A/57/325, A/57/326, A/57/345, A/57/349, A/57/366 and Add.1, A/57/433 and A/C.3/57/5)

(e) Report of the United Nations High Commissioner for Human Rights (*continued*) (A/57/36 and A/57/446)

1. **Mr. Amor** (Special Rapporteur of the Commission on Human Rights on freedom of religion or belief) presented his report (A/57/274), which was organized in accordance with the two components of his mandate: management of the phenomena of intolerance and discrimination, and prevention.

2. Prevention, which was fundamental, called for a strategy based on knowledge, dialogue and education. The knowledge aspect involved research aimed at identifying problems more precisely with a view to developing the capacity to deal with them more effectively. A study on the status of women in relation to religion and traditions (E/CN.4/2002/73/Add.2), which contained a number of recommendations, was relevant in that connection: respect for cultures and traditions should go hand in hand with respect for the rights of women. Research on religious extremism, sects, and the after-effects of the events of 11 September 2001 in relation to religion and conviction would also be timely.

3. The second aspect of the recommended strategy was concerned with dialogue, both intra- and inter-religious. Dialogue was a promising approach which should transcend proclamations of faith to embrace genuine commitment. Communities of religion or belief should be encouraged to explore, beyond the confines of dogmatism, modes of conduct that might serve to reduce tensions and foster greater tolerance and respect. It was essential to appeal primarily to minds and mentalities.

4. Priority in that connection should be given to education, and to school education in particular. The International Consultative Conference on School Education in relation to Freedom of Religion and Belief, Tolerance and Non-discrimination, held in Madrid from 23 to 25 November 2001, with over 800 participants, had culminated in the adoption by consensus of an outcome document containing numerous recommendations aimed at safeguarding schools against intolerance and discrimination based on religion or belief, and against ideological or religious indoctrination in any form. The Special Rapporteur would welcome proposals for initiatives aimed at ensuring that schools everywhere would become means of inculcating respect for others and preparing future generations for tolerance.

5. The other component of his mandate was the management of intolerance and discrimination based on religion or belief. In that connection, the Committee's attention was directed to the analysis, in the report, of communications sent to States. The vulnerability of minorities was clearly apparent, and it was further aggravated by segments of the media, which did not hesitate to resort to crude stereotypes and thereby helped reinforce them. The main victims of these practices were Muslim minorities, but Jewish and Christian minorities were targeted as well.

6. The analysis of communications contained in the report also revealed the unsatisfactory, even tragic, situation of women. Certainly 2002 had been a year of peril and a sharp rise in intolerance and discrimination, and it had also been marked by outbursts of obscurantism, including in particular the sentencing of two Nigerian women to death by stoning for adultery. The court that had passed the sentences had claimed Islamic law as its authority. Such sentences were unacceptable in terms of human rights. The international community was invited to react and to help the Federal State of Nigeria contain and control religious confrontations while simultaneously combating extremism and obscurantism. States that had not yet responded to requests from the Special

Rapporteur to visit them (Democratic People's Republic of Korea, Georgia, Indonesia, Israel, Nigeria, Russian Federation) were urged to be more cooperative.

7. The "management" aspect of the Special Rapporteur's mandate also covered the tragic repercussions of the events of 11 September 2001, including in particular the wide range of abuses that had occurred in many countries, ranging from inflammatory language, intolerance, discrimination, stereotyped portrayals and bias to waves of suspicion or even hatred. There was reason to fear that Security Council resolution 1373 (2001) concerning counter-terrorism might lend itself to teleological interpretations that would give rise to excesses. The crucial question was not so much whether terrorism should be resisted as whether any and all means were justifiable in resisting it. The regrettable tendency for self-identifying groups to close ranks against non-members appeared to be gaining ground and was undermining the credibility of the whole human rights protection system, which was increasingly at risk of being perceived as a Western system and an instrument of Western domination, rather than a universal structure which all had helped to build.

8. **Ms. Eskjær** (Denmark) said that she was looking forward to the fuller report that the Special Rapporteur would be submitting at the fifty-ninth session of the Commission on Human Rights. Religious discrimination against women was an issue of particular importance. The European Union (EU) had repeatedly expressed its serious concern about penalties, including the death penalty, that were inflicted upon women. In February 2002 the Special Rapporteur and his counterpart on the question of torture had joined forces to send an urgent appeal to China; did the Special Rapporteur regard such joint urgent appeals as likely to be more effective? Lastly, with reference to the draft programme of action aimed at combating discrimination against women based on religion or belief, it would be of interest to hear any proposals that the Special Rapporteur might be able to formulate in the matter.

9. **Mr. Roshdy** (Egypt) expressed gratification with the quality of the contacts that the Special Rapporteur had established with States, and asked him whether in his view there was a worldwide trend in the direction of greater freedom of religion or belief, or whether the reverse was the case.

10. **Mr. Cherif** (Tunisia) said that he agreed with the Special Rapporteur: despite sporadic efforts to promote dialogue between civilizations, on balance 2002 had been a growth year for intolerance. The Special Rapporteur's idea of preventive action in that area was excellent. It would be of interest to hear further details.

11. **Mr. Hussain** (Pakistan) complimented the Special Rapporteur on his conscientious execution of his mandate. The convening of the Madrid Conference in 2001 and the dialogue that had been established with the Special Rapporteur were particularly gratifying. The incidents in Pakistan referred to in his report had been attacks organized by dissident groups that were hostile to the international coalition's efforts to combat terrorism. Unfortunately, there was a well-orchestrated campaign under way to destabilize the Government of Pakistan and undermine the fundamental values of Islam, which were religious tolerance, peace and harmony. Ninety-seven per cent of all Pakistanis were Muslims. With respect to minorities, and with particular reference to the specific incidents noted in the report, the Government had communicated its reply concerning one of those cases to the Special Rapporteur, but unfortunately it had reached him after publication of his report. The other two incidents referred to in paragraphs 46 and 49 of the report were currently being investigated, and the persons who had been responsible for them would shortly be arrested and tried.

12. It would be of interest to know whether the Special Rapporteur had succeeded in identifying the forces responsible for the rise of anti-Islamic and anti-Jewish feeling, both of which were trends which, in some regions, could lead to widespread clashes. It would also be useful for the Special Rapporteur to determine to what extent such phenomena were compatible with freedom of expression and freedom of opinion. The delegation of Pakistan held that freedom of expression and freedom of opinion could never, under any circumstances, serve as justification for blasphemy against Islam or attempts to challenge the validity of the principles of the Sharia. It would be of interest to hear the Special Rapporteur's views on this issue, which was a source of international controversy and might lead to consequences that would be significant for the general culture of tolerance and harmony.

13. **Mr. Konfourou** (Mali) noted that the Special Rapporteur advocated a strategy of prevention based on knowledge, dialogue and education. In that connection, he asked the Special Rapporteur whether he was working in synergy with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, who had spoken favourably of dialogue between civilizations before the Third Committee two weeks earlier.

14. **Mr. Amor** (Special Rapporteur of the Commission on Human Rights on freedom of religion or belief), replying to the representative of Denmark, said that while considerable progress had been achieved here and there, the status of women remained unsatisfactory, sometimes precarious, and sometimes actually tragic. While much good work was being done within the framework of the United Nations system, it was still inadequate. Action should proceed on two levels. In the first place, women were subjected to discrimination in the name of religion and belief. Such discrimination should be combated on a day-to-day basis in the light of States' own commitments and taking into account universally established principles and values. The other level was that of prevention. To be sure, more time was required for effective preventive action, but even so it would be desirable to expedite the process by working to ensure that women could have access to primary and advanced teaching and education on an equal footing with men, and to ensure that social practices, traditions and religions did not constitute an obstacle to women's liberation and accession to the full human dignity to which they were entitled. A prerequisite for the liberation of women was their economic liberation, and in many countries, women were in a state of total economic dependence. That situation was perhaps unintended, but none the less it appeared to be part of the social structure and the normal order of things. Change was therefore essential.

15. It was important to note that the utility of non-conventional mechanisms would be strengthened by cooperation among special rapporteurs whose mandates included, directly or indirectly, the issue of the status of women. They might meet once a year to devise a plan of action. Such a plan would necessarily be based on education, economic advancement, and the elimination of discrimination, regardless of whether it originated from religion or belief or was attributable to other vectors. The delegation of Denmark would be welcome to discuss the question with the Special Rapporteur at greater length. He had, of course, put forward many proposals in that connection on various occasions.

16. The answer to the question asked by the representative of Egypt was "yes", but progress to date had been comparatively modest. The more fully freedom of religion and freedom of expression developed, the more prominent real or supposed tensions attributed to religion became, with the result that tensions and intolerance persisted, sometimes to raucous media accompaniment. Moreover, there were a great many minorities that did not yet enjoy those freedoms, which in any case did not entail any assurance of total liberty within religions, even great religions. There was little that could be done about intolerance and discrimination. Those phenomena appeared to be becoming progressively more uncontrollable, quite apart from the fact that the events of 11 September had further stoked the flames of incomprehension and suspicion, not to say hatred and intolerance.

17. With respect to tolerance, the issue raised by the representative of Tunisia, the situation had improved, as was apparent from the efforts that had been devoted to promoting a culture of peace and dialogue between civilizations. However, while a great many initiatives aimed at fostering inter-religious dialogue had been launched since 1980, all such initiatives were confronted with the fact that inter-religious dialogue was frequently inseparable from dogma, with the result that no sooner had it got under way than fundamental questions arose about the dialogue, those engaging in it and the objective in view. The tendency to proselytize, implicit or explicit, was another factor that tended to erect barriers. Despite all this, there was reason to feel confident that the way of dialogue would win out in the end, since it tended, if not to promote understanding, at any rate to minimize tension. Once again, education, especially school education, was of critical importance as a means of preparing minds for a little less incomprehension and rejection.

18. There were firm bonds of cooperation between the Special Rapporteur and Pakistan. He emphasized the Government of that country's determination to defend freedom despite the incomprehension of large marginal groups in society that could be mobilized much more readily by appeals to passion and excess than by calls for reason and moderation. It was those

excesses that caused Pakistan, like other countries both near and far, to be shaken on occasion by movements that might objectively be termed intolerant. It was essential for Pakistan to continue to fight against phenomena of that type. Schools, in particular, had a role to play in combating the extremism, intolerance and discrimination taught in some medersas. It was true that the difficulties were so great that the Government had sometimes tended to give up in despair. Not only were discrimination and intolerance totally at variance with article 18 of the International Covenant on Civil and Political Rights and the Declaration of 25 November 1981 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, but any defamation of religion was unacceptable. It was true that religion was sometimes used for improper ends, but it was also a fact that some religions, including Islam in particular, were targeted for genuinely offensive remarks much more frequently than others. At the same time, an ossified reading of the Sharia did a disservice both to religion and to human dignity.

19. The representative of Mali had asked about combined action with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. There were indeed joint initiatives aimed at promoting dialogue between civilizations, but their resonance in social terms was limited. The way forward lay in encouraging meaningful dialogue that transcended mere formalities leading nowhere. They key to a brighter future was the use of prevention and the action of international bodies to bring about change in a situation that had become unacceptable since 11 September.

20. **Ms. Jahangir** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions) introduced her report (A/57/138) under agenda item 109 (c), reviewing the main terms of reference of her mandate and giving a brief account of the four missions that she had undertaken during the period covered in the report.

21. In Turkey, she had found that the number of extrajudicial executions had declined considerably, but that impunity continued to be a serious problem in cases of extrajudicial executions by security forces.

22. Extrajudicial executions of children had been her main concern during her mission to Honduras. Furthermore, many Governments were not seriously interested in the right to life of children, and there was a wide gap between rhetoric and practice.

23. On 16 June 2002, the High Commissioner for Human Rights had submitted to the Security Council a preliminary report on her mission to the Democratic Republic of the Congo (S/2002/764). A full report, in the form of an addendum to that document, would be submitted to the Commission on Human Rights at its 2003 session. There was ample evidence that the de facto authorities had used the pretext of a "rebellion" to carry out extrajudicial executions of civilians, police and soldiers in Kisangani.

24. In Afghanistan, while there had been a striking improvement in the human rights situation, she had the impression that extrajudicial and arbitrary executions continued to occur, and that the judiciary, the police and the Independent Human Rights Commission were greatly in need of technical support. The perpetrators of earlier human rights violations, including numerous massacres, continued to bask in the prevailing climate of impunity. She had recommended the establishment of an independent, impartial international committee of enquiry, the mission of which would be to give a full account of all serious human rights violations committed during the past 23 years, with a view to launching a reconciliation process and determining responsibility. In addition, it would be desirable to move more quickly to strengthen the legal system and the courts, and to support the efforts of the Independent Human Rights Commission to develop a national strategy for transitional justice.

25. On the basis of information and allegations of violations that had been communicated to her, she had identified different forms of violations. She had also found that Governments were becoming increasingly intolerant with respect to accountability. The right to life of journalists and human rights defenders, who were subject to threats, was being flagrantly violated.

26. With respect to standards applicable to capital punishment, the facts were particularly disturbing in the light of the fact that few countries had reliable statistics at their disposal. It was difficult to ensure that national standards relating to the death penalty were applied. At the same time, however, it was encouraging to find that in some jurisdictions, courts and appeal mechanisms were increasingly tending to proceed with caution in cases involving a decision to apply capital punishment.

27. In areas of conflict, the situation continued to be gloomy: the ethnic and religious tensions which in many cases underlay such conflicts were seldom eased, and security forces quickly found themselves unable to cope with outbreaks of violence. In such cases, legality was abandoned, impunity became the rule, and the task of finding a way out of the conflict became increasingly complicated.

28. Her mandate allowed her to intervene only when the perpetrators of human rights violations were believed to be Government agents or had a direct or indirect link with the State. None the less, she had warned of the growing power of non-State militants, who were frequently supported or protected by Governments or official political authorities.

29. The right to life was frequently violated in countries where the democratic system was non-existent or in gestation. In the absence of any real administration, Governments would rely on security forces to crush not only crime, but dissidence as well on occasion, and resort to violent methods, including even extrajudicial executions. Military and authoritarian regimes had no idea how to deal with situations of violence through political negotiation, and consequently used force exclusively, thereby exacerbating the situation.

30. It was a cause for grave concern that in some countries, impunity for serious human rights violations had become systematic and institutionalized as a result of a weak and inadequate justice system. In some cases, impunity was actually enshrined in law, and laws providing immunity to parliamentarians and other public officials had sometimes tempted leaders of criminal gangs to enter politics simply to hide behind such laws.

31. The growing numbers of executions of children by police authorities was another subject of grave concern, as attested by the facts outlined in her report.

32. Democracy was unquestionably the best ally of human rights, and the viability of any democratic process depended on the existence of an independent judiciary and justice system. In the absence of those factors, the right to life could not be guaranteed.

33. **Mr. Roshdy** (Egypt) suggested that the Special Rapporteur on extrajudicial, summary or arbitrary executions had not complied with the terms of her mandate, and consequently, her report could hardly be accepted. Evidence for that conclusion was to be found in the report itself (document A/57/138).

34. In paragraph 15, for example, the Special Rapporteur outlined the terms and conditions of her mandate. In view of what was there stated, there were grounds for doubting the relevance of the reference to "honour killings" further on in the report, inasmuch as such killings were perpetrated by individuals who were unconnected with any Government agents.

35. Paragraph 37 contained a reference to "sexual minorities", and the term "sexual orientation" was used a short distance further on. According to article 2 of the 1992 Declaration on Minorities, minorities might be national, ethnic, religious or linguistic, but what was a "sexual minority", and what did the expression "sexual orientation" mean?

36. Paragraph 38 referred to the Special Rapporteur's approaches to various Governments, but said nothing about the results of those approaches. As a result, it was difficult to see on what grounds the Governments concerned could reasonably be criticized.

37. His delegation would like the Special Rapporteur to elucidate the expression "mature legal system" used in paragraph 45. Taken in conjunction with the concept of abolition of capital punishment, that expression might be deemed to imply that countries which had not abolished capital punishment were not "mature" as far as their legal systems went. His delegation also questioned the competence of the Special Rapporteur to deal with the question of capital punishment within the mandate that she had been given.

38. The Government of Egypt had consistently argued that all rapporteurs should comply with their mandates. At the time when the draft resolution on extrajudicial, summary or arbitrary executions was being considered, the utility of this particular report was questionable.

39. **Mr. Alaei** (Islamic Republic of Iran) said that his delegation shared the views expressed by the representative of Egypt. The meanings of the terms "extrajudicial, "summary" and "executions", which defined the Special Rapporteur's mandate, should be borne in mind.

40. The Special Rapporteur had overstepped the bounds of her mandate in some respects, and some of the questions addressed in her report were actually

within the mandate of the Special Rapporteur on violence against women, its causes and consequences.

41. His delegation, like the delegation of Egypt, considered that the expression "sexual minorities" required elucidation, as otherwise it would hardly be feasible to consider the question raised by the Special Rapporteur.

42. Lastly, the use of the expression "mature legal system" was questionable.

43. **Ms. Astanah** (Malaysia) said that her delegation supported the Special Rapporteur. However, many of the points discussed in her report were actually within the mandates of other special rapporteurs, such as the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the independence of judges and lawyers. The mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions covered executions that had been carried out by the authorities of a country under conditions that did not conform to due process of law, in contrast to acts classifiable as murders or other killings.

44. In the view of her delegation, the reference to capital punishment had no place in the report.

45. In view of the importance of the questions raised by the Special Rapporteur in her report, it would be desirable to consider the possibility of terminating her current mandate and establishing a new one, if appropriate. It would be of interest to hear the opinion of the Special Reporter on that possibility.

46. **Mr. Vigny** (Switzerland) said that his delegation endorsed the report in its entirety, including its conclusions and recommendations. In particular, his delegation shared the concerns expressed in the report about the execution of children and the issue of impunity.

47. His delegation also agreed with the Special Rapporteur that non-governmental organizations should have free access to data and related information on death penalty cases. The silence of a great many Governments on that subject was not conducive to the work of monitoring to ensure that all applicable safeguards were operational. Where those safeguards were violated, the possibility of extrajudicial, summary or arbitrary executions arose, and those situations were directly within the mandate of the Special Rapporteur.

48. In the matter of sexual minorities, Switzerland was in the forefront of the effort to eliminate all forms of discrimination based on sexual orientation. None the less, it found the use of the expression "sexual minorities" inappropriate, for the reasons mentioned by the representatives of Egypt and Iran. Moreover, the establishment of a new category might have the effect of "diluting" the concept of a minority and thereby weakening international law.

49. **Mr. Hahn** (Denmark), speaking on behalf of the European Union, said that the Special Rapporteur's report was consistent with her mandate. Concerning the matter of impunity, it would be of interest to know whether the Special Rapporteur on extrajudicial, summary or arbitrary executions had been in contact with the Special Rapporteur on the independence of judges and lawyers. Details of the replies received from countries that had been asked about impunity would be of interest as well.

50. The European Union would also like to know how the Special Rapporteur went about ensuring that information relating to capital punishment was communicated to her with complete transparency.

51. How, finally, did the Special Rapporteur propose to obtain reliable statistics on the violence to which some persons were subjected because of their sexual orientation?

52. **Ms. Jahangir** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions), responding to the question concerning the limits of her mandate, said that she had explained in paragraphs 34 and 35 of her report that honour killings were ordinarily within the mandate of the Special Rapporteur on violence toward women, its causes and consequences, but were within her own mandate where the perpetrators of those crimes enjoyed impunity and the Government was deliberately inactive in terms of ensuring that justice was done—in other words, where the killing of women gave rise to institutionalized impunity.

53. In view of the fact that a number of delegations had objected to the idea of recognizing persons of different sexual orientation as a sexual minority, that objection would be taken into account in her future reports. The fact remained that the killing of persons by security forces solely on the grounds of their sexual orientation was something that came within her mandate. Her mandate was not to pass judgement on

the morality or immorality of anyone's sexual orientation, but rather to point out that security forces must not be given licence to kill those persons with impunity, and that Governments had an obligation to investigate their crimes. She wished to make it perfectly clear that she had no intention of exceeding her mandate.

54. The expression "mature legal system", as used in her report, meant a system that conformed to established standards governing the independence of the legal system and judiciary. If the members of the Committee would prefer some other form of words, she would be prepared to comply.

55. In response to the question asked by the representative of Denmark, she said that she cooperated to the fullest possible extent with the Special Rapporteur on the independence of judges and lawyers through exchanges of information and consultation, and that she also cooperated with the Special Rapporteur on violence against women, its causes and consequences, especially on the issue of honour killings.

56. The various countries concerned appeared to be ill at ease about the fact that some public officials enjoyed immunity and were not prosecuted for their crimes.

57. Concerning capital punishment, there were no clear statistics available on numbers of executions or the crimes for which the condemned persons had been sentenced to death; furthermore, NGOs did not have free access to trials and hence could not monitor the proceedings. In some cases, defendants' rights were not respected at all. It was for the legal profession to insist that defendants' rights must be respected and to supervise the entire appeal structure.

58. Death threats received by persons of different sexual orientation were something that no one was willing to talk about, a fact that ruled out any possibility of gathering statistics. Persons of that type were unquestionably targeted by police authorities or individuals with the encouragement of the State, and consequently were in need of protection. It was essential, first and foremost, to acknowledge that the problem existed; in the interests of impartiality, she felt that she must point out that fact to the members of the Third Committee, as the trend was gathering momentum and might come to assume serious dimensions in the future unless immediate preventive action were taken.

59. **Ms. Booto** (Democratic Republic of the Congo) thanked the Special Rapporteur for having gone to the Democratic Republic of the Congo to assess the situation there at first hand. It should be noted that the atrocities in Kisangani had not been committed by the Government, but by armed forces that had invaded the country.

60. **Mr. Af Hällström** (Finland) said that his delegation wished to align itself with the statement made by the representative of Denmark, representing the Presidency of the European Union. In her report, the Special Rapporteur had focused on questions which she considered called for immediate measures (paragraph 8) and which came entirely within her mandate as defined in Commission on Human Rights resolution 2002/36.

61. He thanked the delegation of Iran for raising the question of the definition of extrajudicial, summary and arbitrary executions. It was worth recalling that precise definitions of those terms had been provided by the current Special Rapporteur's predecessor.

62. His delegation would be submitting a resolution on the question. It was prepared to listen to the views of all other delegations in the hope of being able to reach consensus on a text that would unequivocally condemn the execution of victims of all kinds.

63. **Ms. Ahmed** (Sudan) said that the concept of a sexual minority, as the term was used in the Special Rapporteur's report, was somewhat difficult to grasp in view of the fact that the Declaration on Minorities specified that minorities might be national, religious, ethnic or linguistic. Perhaps the reference was to be taken as referring to the two sexes, in which case women could be considered a sexual minority. Alternatively, perhaps the concept was associated with that of sexual orientation.

64. Her delegation, like some other delegations, would also like to know what the Special Rapporteur saw as the limits of her mandate.

65. **Ms. Sundberg** (Sweden) said that her delegation wished to align itself with the statement made by the representative of Denmark, representing the Presidency of the European Union. Her delegation fully supported the way the Special Rapporteur had discharged her mandate, the objective of which was to eradicate the

very existence of those violations of human rights. That task would call for a resolute effort to eliminate impunity in all its forms and require States to prosecute all those who committed such crimes. Until that objective had been attained, there could be no question of terminating the mandate of the Special Rapporteur.

66. Her delegation was well aware that persons of different sexual orientation—meaning homosexuals of both sexes and transsexuals—were totally devoid of protection, and were sometimes killed merely because of their sexual orientation. Consequently, it was appropriate for them to be included in the report. Those who killed them should be brought to justice and punished. With respect to impunity in cases of murder committed by members of the armed forces, her delegation would like to know what measures the Special Rapporteur considered should be taken by Governments to ensure that those who committed such crimes were prosecuted. With respect to extrajudicial executions of children, it would be of interest to learn how the Special Rapporteur could cooperate with the Special Representative of the Secretary-General for Children and Armed Conflicts and with the Special Rapporteur on the sale of children, child prostitution and child pornography.

67. **Mr. Hussain** (Pakistan) said that the polemic over the mandate of the Special Rapporteur showed clearly just how difficult that mandate was, concerned as it was with the most basic of all rights: the right to life. The integrity of the Special Rapporteur was not in doubt: it was clear from her explanations why she had included this or that category of persons in her report, inasmuch as in every case the crimes in question had been condoned by the authorities. But that distinction had been deleted from the resolution on the matter. It would have to be reinserted if the sponsors wished to arrive at a consensus such as had been enjoyed by previous resolutions on the question. The definitions offered by the representative of Finland, whatever their merits, were not part of any international convention, and consequently could not be deemed internationally acceptable definitions. It was thus essential to continue to explore the question in greater depth.

68. His delegation would have liked to see the report address the situation of persons who were victims of institutionalized discrimination (such as the caste system) and as a result found themselves relegated to a condition of inferiority and deprived of all rights.

69. **Ms. Jahangir** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions) thanked the representative of the Democratic Republic of the Congo for her clarification, and the representative of Finland for recalling the definitions provided by her predecessor. Whenever complaints were brought to her attention or violations reported to her, it was her duty to examine the cases involved carefully in order to decide whether they were covered by her mandate. If they were, she considered that it was more appropriate to refer to the victims in her report than to exclude them from it.

70. Replying to the representative of the Sudan, she pointed out that the concept of a sexual minority was already current in the usage of NGOs and other organizations to designate persons who did not belong to the two major sexes. The reason why the term was used in the report was that it was, in her view, desirable for governmental and non-governmental practice to correspond.

71. Replying to the representative of Sweden, she said that in order for extrajudicial executions committed by members of the armed forces to be curtailed, transparency in the chain of command was essential. It was also essential for the security forces and the armed forces not to yield to prejudice, to realize that they must not resort to the excessive use of force, and to understand that they would be impartially held accountable for their acts. In addition, training must be provided for personnel at all levels. Civilians, for their part, must have confidence that they could report cases of extrajudicial executions without fear. It must be admitted that the situation was fairly satisfactory in some countries. With respect to protection of the rights of children, it was important to realize that when it came to protecting highly vulnerable groups, political will was crucial.

72. Replying to the representative of Pakistan, who had said that he would have liked to see the report include extrajudicial executions of persons belonging to particular castes or religions, she pointed out that it was always important to adopt a balanced approach.

73. Dialogue with the members of the Third Committee was highly useful, and she hoped that it would continue.

74. **Ms. Ayuso** (Argentina) said that she would like to thank the Special Rapporteur for her report, whatever

reservations might have been prompted by the concept of "sexual minorities". International human rights promotion and protection mechanisms, such as the appointment of Special Rapporteurs of the Commission on Human Rights, and in particular the appointment of the Special Rapporteur on extrajudicial, summary or arbitrary executions, were not intended to cast aspersions on particular countries, but rather to induce the international community as a whole to safeguard human rights more effectively. In that connection, she thanked the Special Rapporteur for having helped Argentina, including both the authorities and civil society, to realize the crucial importance of eliminating executions of that kind and bringing those who committed them to justice.

75. **Ms. Elisha** (Benin) noted that in her reply to the first series of questions from members, the Special Rapporteur had used the expression "the two major sexes". Was there a third sex, or had the Special Rapporteur simply been alluding to the sexual orientation of individuals?

76. **Mr. Alaei** (Islamic Republic of Iran) said that killings of individuals because of their sexual orientation should not go unpunished, regardless of whether the matter came within the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions. However, it would be desirable to reach agreement on a practical definition of sexual orientation as such, in order to remove any ambiguity and allow Governments to discharge the obligations incumbent upon them under international instruments.

77. **Ms. Jahangir** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions) explained that her report simply reflected information that she had received to the effect that persons had been killed by security forces solely on the grounds of their sexual orientation, i.e. the fact that they were homosexual or transsexual. She was quite prepared to use different terminology if the members of the Third Committee so preferred. Her purpose was not to level accusations at any particular country, but to promote human rights, especially the rights of those who were most vulnerable.

78. **Mr. van Boven** (Special Rapporteur of the Commission on Human Rights on the question of torture) introduced his report (A/57/173), briefly reviewing the three main tasks that he had been mandated to perform. In the first place, he was required to transmit letters containing allegations of torture or ill-treatment to the Governments concerned, asking them to reply and comment. During the period covered by the report, approximately 100 such letters had been sent to some 60 countries. In the second place, where there was good reason to believe that an individual was being subjected to torture or other cruel, inhuman or degrading treatment or punishment, he could issue an urgent appeal for elucidation of the question, while making no assumptions about the validity of the allegations in the case. In such cases, his task was not to relieve the individual concerned of liability for his crimes, if any, but simply to ensure that his inalienable rights were respected, regardless of the seriousness of any acts he might have committed. During the period covered by the report, over 250 such urgent appeals had been directed to approximately 70 Governments, some on his own behalf and some with other holders of mandates from the Commission on Human Rights. In that connection, it was gratifying to note that a Quick Response Desk had been established within the Office of the United Nations High Commissioner for Human Rights, which was materially assisting him in his task. In the third place, he had occasion, within his mandate, to undertake field missions. He was planning to go to Uzbekistan and to Bolivia early in 2003, he was engaged in consultation with the Governments of China, Georgia and Nepal, and he had asked the Governments of Algeria, Egypt, India, Indonesia, Israel, the Russian Federation (concerning Chechnya) and Tunisia to invite him to visit their respective countries, but as yet had received no replies.

79. With reference to the problem of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the context of measures aimed at countering terrorism, it was essential to bear in mind that the legal and moral basis for that prohibition was absolute and imperative, and must under no circumstances yield or be subordinated to other interests, policies and practices. In that connection, it was regrettable that the provisions of some national anti-terrorist legislation did not necessarily afford the necessary legal safeguards recognized in international human rights law. Judicial control of interference by the executive power with the individual's right to liberty was an essential feature of the rule of law, and the right to habeas corpus, the right to communicate with a lawyer within 24 hours following arrest, and a corollary of that right, the

prohibition of incommunicado detention, should be guaranteed under all circumstances. Confessions or evidence extracted by illegal means during interrogation should not be admissible in court. There were grounds for concern about laws that provided for immunity from prosecution for any authority on whom powers had been conferred under anti-terrorist legislation, and about the possibility that the right to seek asylum had been unduly restricted by such legislation. The principle of non-refoulement was of the utmost importance. He appealed to all States to ensure that in all appropriate circumstances the persons they intended to extradite, under terrorist or other charges, would not be surrendered unless the Government of the receiving country had provided an unequivocal guarantee to the extraditing authorities that the persons concerned would not be subjected to torture or any other forms of ill-treatment upon return, and that a system to ensure that they were treated with full respect for their human dignity had been put into place.

80. With respect to international and national mechanisms for visits to places of deprivation of liberty, it was important for all such places to be subject to external supervision by independent officials, such as judges, prosecutors, ombudsmen and national or human rights commissions, and by civil society, as well as by independent monitoring institutions such as the International Committee of the Red Cross and the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment. Focused visits by independent multidisciplinary teams of experts to places of detention had proved to be a most effective way to prevent torture. Law enforcement officials and other detention personnel and authorities who were aware that their behaviour might be scrutinized at any point by internal and external monitoring bodies were certainly much more inclined to follow existing rules and procedures pertaining to arrest and detention. Furthermore, such mechanisms would make false accusations of abuse—always difficult for law enforcement officials to refute—much harder to sustain. For all those reasons, the members of the Committee were invited to adopt the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

81. With respect to the problems of the corporal punishment of children, early in the year he had joined the Global Initiative to End all Corporal Punishment of Children launched in April 2001. Corporal punishment in the family home, in State institutions, in schools, in penal institutions for juvenile offenders and in other institutions appeared to be widely accepted, legally as well as culturally, in a large number of countries. But such punishment often caused serious physical and psychological injury or even death, and it was also believed to play a significant role in the development of violent behaviours and actions, both in childhood and later in adulthood. Consequently, it was important to devise positive, non-violent forms of discipline and punishment. He called upon States to take adequate measures, in particular legal and educational measures, to ensure that the right to physical and mental integrity of children was protected.

82. **Mr. Morikawa** (Japan), Vice-Chairman, took the Chair.

83. **Mr. Hahn** (Denmark) said that the European Union fully supported the Special Rapporteur's recommendation for adoption of the optional protocol to the Convention. It would be of interest to know how the Special Rapporteur proposed to coordinate his own activities with those of the visiting mechanism for which provision was made in the optional protocol.

84. In view of the fact that the Istanbul Principles set forth measures that should be taken to ensure that complaints were investigated quickly and impartially, it would be of interest to know whether those principles were used by Governments during the investigation procedure.

85. The European Union wondered whether there was any coordination among the various bodies and mechanisms that were concerned with the issue of torture, including in particular the United Nations Voluntary Fund for Victims of Torture, and whether such cooperation should be expanded.

86. Lastly, the European Union would like to know what countries the Special Rapporteur proposed to visit in the future.

87. **Ms. Loemban Tobing-Klein** (Suriname) said that she had no doubt that human rights education was the answer to the problem of grievous ill-treatment of human beings, especially children. Her delegation was in favour of the adoption of the optional protocol to the

Convention, and consequently Suriname was one of the sponsors of the draft resolution on torture that would be submitted to the Committee in due course.

88. **Mr. van Boven** (Special Rapporteur of the Commission on Human Rights on the question of torture), replying to the questions asked by the representative of Denmark, said that for effective coordination of the efforts of all concerned, it was essential for the Special Rapporteur to be informed of the activities of the visiting mechanism that was to be established pursuant to the optional protocol, if adopted, to avoid overlapping and duplication and to ensure that the various mandates were complementary.

89. The Commission on Human Rights and the General Assembly had not officially adopted the Istanbul Principles, but had taken note of them. It was difficult to say to what extent Member States were applying them. Countries whose attention had been drawn to those principles had not clearly stated what role they played in Government policy. However, the Attorney-General of Mexico had organized a training workshop for coroners that took the Istanbul Principles into account.

90. Concerning the matter of coordination, he had consulted with the Committee against Torture established by the Convention and the Voluntary Fund for Victims of Torture with a view to identifying the most useful forms of cooperation and ways of ensuring that their several activities complemented each other. For example, he would not schedule a field mission to a country that had already been visited by a representative of one of those bodies. They also exchanged information.

91. His prospective in situ visits included missions to Uzbekistan and Bolivia early in 2003, and consultations with Georgia, China and Nepal were in progress. In situ visits were highly important, not only as a means of experiencing the situation in the country concerned at first hand, but also because the object of such visits was not so much to find fault as it was to observe and provide assistance.

92. In reply to the remarks made by the representative of Suriname, it was noteworthy that under article 10 of the Convention against and Cruel, Inhuman or Degrading Treatment or Punishment, education and training for law enforcement personnel, medical personnel, public officials and other persons were prescribed as preventive measure.

The meeting rose at 1 p.m.